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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~426~~ 211

THE UNITED STATES, APPELLANTS,

vs.

THOMAS E. LYTLE.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 19, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 426.

THE UNITED STATES, APPELLANTS,

vs.

THOMAS E. LYTLE.

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1 In the United States Court of Claims.

THOMAS E. LYTLE
vs.
THE UNITED STATES. } 3744.

To the honorable the Court of Claims of the United States:

The petition of Thomas Lytle respectfully represents to this honorable court that he is a citizen of the city of Washington, in the District of Columbia; that, from the thirtieth day of June, A. D. 1866, to the thirtieth day of June, A. D. 1867, he was employed by the defendant as a watchman on the public grounds in the city of Washington known as the Capitol Grounds; that he was duly appointed said watchman by the Commissioner of Public Buildings in conformity with law; that his salary, as fixed by law, was nine hundred and twenty-five dollars per annum, and that the same was regularly paid to him by said Com-
2 missioner of Public Buildings. Your petitioner further avers that the Congress of the United States did, at the second session of the thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employees in the civil service of the United States, which joint resolution was approved and signed by the President of the United States on the 28th day of Feb'ry, 1867, and is in the following words, to wit:

"That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated to the following-described persons now employed in the civil service of the United States, at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion and in any of the following-named Departments, or any Bureau or division
3 thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers and temporary, and all other clerks and employees, male and female, in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed
4 on the amount such person is so entitled to receive for services in any or all of said Departments or offices within said year: *Provided*, That the above-named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

And your petitioner further avers that, by the terms of said resolution, the United States agreed to pay to your petitioner the additional

sum of twenty per centum on his said salary, as fixed by law as aforesaid, amounting to the sum of one hundred and eighty-five dollars; that he has made application to the proper officer of the Treasury Department having power to decide upon his application, to wit, the First Comptroller thereof, for payment of the said twenty per centum on said salary, and that payment thereof was by him refused.

The decision of said Comptroller is in the following words, to wit:

"TREASURY DEPARTMENT, COMPTROLLER'S OFFICE,
"*April 23rd*, 1867.

"SIR: I have examined the questions presented by you in relation to the claim of twenty per cent. additional compensation made by sundry persons formerly employed under the Commissioner of Public Buildings, and have come to the conclusion that the persons named are not within the provisions of the joint resolution of Feb'y 28th, 1867.

"Very respectfully,
(Signed) "R. W. TAYLOR,
"*Comptroller.*"

And your petitioner further avers that he has at all times borne true allegiance to the Government of the United States, and that he has not, in any way or manner, voluntarily aided, abetted, or given encouragement to rebellion against it; that he is the sole owner of this claim, and that no other person has any interest therein.

Your petitioner therefore prays judgment against the United States on account of the matters and things hereinbefore set forth, for the sum of one hundred and eighty-five dollars, the amount of twenty per cent. on his said salary from the thirtieth day of June, A. D. 1866, to the thirtieth day of June, A. D. 1867, besides the costs of this action.

J. DANIELS,
Of Washington, D. C., Att'y for Claimant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph Daniels, of said county, being duly sworn, deposes and says that he is the attorney for the claimant in the foregoing entitled action; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after deducting all just credits and offsets; and that deponent believes the facts as stated in said petition are true.

JOSEPH DANIELS.

Subscribed and sworn to before me this 13th day of Nov., 1868.
[L. S.] THO'S J. MYERS,
Notary Public.

(Indorsed:) 3744. Thomas E. Lytle vs. The United States.

8 In the Court of Claims of the United States.

THO'S E. LYTLE
vs.
THE UNITED STATES. } No. 3744.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government, to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

9 In the Court of Claims.

THOMAS E. LYTLE
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And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Thomas E. Lytle have and recover of and from the United States the sum of one hundred and seventy-nine dollars sixty cents, ($179 60.)

By the court:
A true copy of record.

10 Court of Claims, Dec. term, 1869.

THOMAS E. LYTLE
vs.
THE UNITED STATES. } 3744.

The defendants, by their Attorney General, come and ask the allowance of an appeal of this case to the Supreme Court of the United States, on the ground that the judgment will affect a class of cases.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in the clerk's office, Aug. 17, 1870.

AT CHAMBERS.

Ordered that the appeal as prayed in this case be allowed.
Sept. 26, 1870.

JOSEPH CASEY,
Ch. Justice.

11 In the Court of Claims of the U. S., December term, 1869.

I, Edward G. Loring, presiding judge of the Court of Claims, do hereby certify that the judgment rendered in the case of Thomas E. Lytle vs. The United States, on the 23d day of May, 1870, affects a class of cases and furnishes a precedent for the future action of an Executive Department in the adjustment of such class of cases.

EDW. G. LORING.

12 In the United States Court of Claims.

THO'S E. LYTLE
vs.
THE UNITED STATES. } No. 3744.

The finding of facts and the conclusions of law on said facts on which the court founded its opinion.

This cause coming on to be heard the 23 day of May, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact—

That the claimant was an employé in office of the Commissioner of Public Buildings, as watchman in the east grounds of the Capitol, and was in office from the 30th day of June, 1866, until the 30th day of June, 1867, at a salary of $864 until April 1st, 1867, and at $1,000 from April 1st, 1867, until June 30th, 1867, per annum.

That application was made to the First Comptroller of the Treasury to be allowed the additional compensation of 20 per centum on his salary under the joint resolution of Congress approved February 28th, 1867, and that such compensation was refused.

That he was loyal to the Government of the United States, and that he took the oath of allegiance commonly called the test oath.

13 The claimant was not employed within the [four walls of the] office of the Commissioner of Public Buildings.

By the court.

The defendants also requested the court to make the following findings, which request was refused:

Thomas E. Lytle was watchman east grounds on June 30th, 1866, and continued so for that fiscal year.

The rate of his pay was $864 a year until April 1st, 1867, from which date it was $1,000 per year. (See testimony of B. B. French and J. W. Westfall.)

On March 2ond, 1867, the office of Commissioner of Public Buildings was abolished. (14 St. Large, 466.)

The claimant never made application for the settlement and payment of his claim, either before or during this litigation, to any department of the Government in which such claims are ordinarily settled.

(Indorsed:) 3744. Thomas E. Lytle vs. The United States.

14 In the Court of Claims.

THO'S E. LYTLE
vs.
THE UNITED STATES. } No. 3744.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for defendants for the allowance of an appeal, as filed in the clerk's office, Aug. 17, 1870, and of the order of Chief Justice Casey allowing the same; of the certificate of the presiding judge; of the findings of fact on which the court founded its judgment, and of the requested findings by defendants, which request was denied by the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 17th day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 426. The United States, appellants, vs. Thomas E. Lytle. Court of Claims. Filed 19th December, 1870.